IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/12/2002

CORAM

THE HON'BLE MR. JUSTICE R. JAYASIMHA BABU
AND
THE HON'BLE MRS. JUSTICE PRABHA SRIDEVAN

L.P.A.No.72 of 2002 and L.P.A.No. 141 of 2002
and
C.M.P.No.5516 of 2002
in L.P.A.No.72 of 2002

In L.P.A.No.72 of 2002:

Thiru. T. Shanmuga Mudaliar ... Appellant

-Vs-

1. Tmt. Noorjahan

2. Minor Mohd. Amsad

3. Minor Apsana Parveen

4. The Divisional Manager
United India Insurance Co. Ltd.,
Vellore ... Respondents

In L.P.A.No.141 of 2002:

The Divisional Manager
United India Insurance Co. Ltd.,
Vellore ... Appellant
Vs.

1. T. Shanmuga Mudaliar

2. Noorjahan

3. Mohammed Amsad(Minor)

4. Apsana Parveen (Minor)
Minor Respondents 3 and 4 rep by
their mother and guardian

Noorjahan, the 2nd Respondent
herein 2 to 4 residing at 6C,
Gandhi Street, Chenkuttai
Katpadi ... Respondent

Prayer in L.P.A.No.72 of 2002: Letters Patent Appeal under Clause 15 of the Letters Patent against the order passed by His Lordship Mr. Justice V. Kanagaraj in C.M.A.No.634 of 2001 dated 10-12-2001.

Prayer in L.P.A.No.141 of 2002 : Letters Patent Appeal against the judgment and decree dated 10-12-2001 made in C.M.A.No.634 of 2001 passed by the Hon'ble Mr. Justice V. Kanagaraj modifying the judgment of the Commissioner for Workmen Compensation-I, Chennai dated 04-12-2000 and made in W.C.No.2 of 1998.

!For appellants :: Mr. Karthik for
Mr. T.S. Gopalan
for appellant in LPA 72/02 &
for respondent No.1 in LPA 141/02

^For respondent :: Mr. Vasudevan for RR1 to 3
in LPA 72/02
& for RR2 to 4 in LPA 141/02
Mr. T.D. Vasu for R4 in LPA 72/02 &
for appellant in LPA 141/02

:JUDGMENT

PRABHA SRIDEVAN, J.

The driver of the bus belonging to the appellant in L.P.A.No.72 of 2002 and insured by the appellant in L.P.A.No.141 of 2002 died on 23-09-1995. A claim was made by his legal representatives (the respondents herein) under Section 10(1) of the Workmen's Compensation Act on the ground that the death was caused because of the heavy strain due to the employment. The Workmen's Compensation claim Commissioner awarded compensation but only against the insured/ employer. The learned Single Judge, allowed the civil miscellaneous appeal filed by the employer holding that the Insurance Company is jointly and severally liable to pay the compensation. Against that these appeals have been filed.

2. The liability to pay compensation has been resisted on the ground that no materials have been placed for consideration such as the FIR, the post mortem certificate for ascertaining the cause of death, nor any proof of the salary particulars. There cannot be any dispute that if the liability to pay compensation is upheld then the liability of the insurer also must follow necessarily.

3. On the fateful day, the driver had halted the bus at the

stop, stepped out to have refreshments and succumbed to heart failure. In the application filed by the claimants it is stated that the death occurred "while on duty due to overstrain arising out of and in the course of the employment". In the counter filed by the employer it is admitted "that the deceased workmen Abdul Sattar, driver of the vehicle died due to heart attack while on duty." It is the Insurance Company, which in its counter had denied that the death arose out of and in the course of the employment. The conductor has been examined as a witness on behalf of the claimants and it is his case that on 23-09-1 995 the deceased driving the bus and he was the conductor, and that when the bus reached Tiruvannamalai the driver stopped the bus to take some refreshments and the driver fell ill at the very stop, where the bus had stopped and that he threw up, his body turned cold and that he was taken to the Tiruvannamalai Government Hospital and he died. He has stated that the death occurred on account of the strain of duty. The cross-examination in this regard is more on the question of whether the trip sheet has been filed to show whether actually the deceased was driving the bus at the time of the death.

4. The word "accident" has not been defined under the Act.
But the definition given to this word by Lord Macnaghten in the case of Fenton Vs. Thorley and Co. Ltd., (1903 AC 443) has been accepted as a most appropriate meaning of the word. He has defined accident "as denoting an unlooked for mishap or an untoward event which is not expected or designed." The connection between the accident and the employment may be established if the strain had contributed to or accelerated or hastened the accident. It may not be possible at all times to produce direct evidence of the connection between the employment and the injury, but if the probabilities are more in favour of the applicant then the Commissioner is justified in inferring that the accident did in fact arise out of and in the course of the employment.

5. In the Mackinnon Mackenzie and Co. Private Ltd., Vs.
Ibrahim Mahmmod Issak (1970 I LLJ 16 = 1970 Lab I.C. 1413 (Vol.3, C.N.313)) the Supreme Court held that,
"To come within the Act, there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, to its conditions, its obligation and its incidents. If by reason of any of those factors the workman is brought within t he zone of special danger, the injury would be one which arises 'out of employment'. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless, of course, the workman has exposed himself to an added peril by his own imprudent act. "

6. And again in the same judgment, the Supreme Court said,
"in the case of death caused by

accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to Court for relief must necessarily prove

it by direct evidence. It may be inferred when the facts proved justify the inference. ... ... It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it."

7. Yet in another case involving the same Company viz., Mackinnon Mackenzie & Co., (Private), Ltd., Vs. Rita Fernandez (Smt.) reported in 1969 II LLJ SC 812 the legal representatives of an employee on board a ship who died of cardiac failure claimed compensation. The Supreme Court dismissed the appeal by the employer because it had not let in evidence to show whether the workman was asked to carry out his duties during the relevant period and adverse inference could be drawn against the appellant. The Supreme Court held that "even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under circumstances which can be said to be accidental, his death results from injury by accident". For this they relied on Clover Clayton & Co. Vs. Hughes (1910 A.C. 242) where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. The House of Lords held thus:

"No doubt the ordinary accident," said Lord Loreburn, L.C. "is associated with something external; the bursting of a boiler or an explosion in a mine, for example. But it may be merely from the man's own miscalculation,such as tripping and falling. Or it may be due to both internal and external conditions, as if a seaman were to faint in the rigging and trumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight, it would properly be described as an accident. So, I think, rupturing an aneurysm when tightening a nut with a spanner may be regarded as an accident."

8. There can be no dispute that the deceased died in the course of the employment since there was no occasion for him to be at the Tiruvannamalai Bus stand unless he had been driving the bus. It is futile to contend otherwise. The evidence of the conductor of the same bus, who had seen the deceased fall and die at the very spot where the bus had stopped cannot be ignored. The objections to the claim based on non-filing of the FIR or post-mortem report deserve no consideration. The claimants had pleaded overstrain as having contributed to the death. The accident, the unlooked for mishap, had happened at a spot, where the deceased would not have been but for the fact he was discharging his duty as a driver. It is capable of being attributed to the strain, ordinarily, inherent in the discharge of his duty. So the claim fall squarely within the Act.

9. In these circumstances, both the appeals are dismissed since the employer and the insured are liable to pay the compensation awarded by the Commissioner. No costs. The connected miscellaneous petition is also dismissed.

Index: Yes
Internet: Yes
glp

To

The Commissioner of Workmen Compensation-I,
Chennai